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September 19, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Dear Sir:

Enclosed herein is an original and four (4) copies of Comments, submitted on behalf of E.F. Johnson Company, in response to the Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority over Intrastate Cellular Service Rates (accompanied by Request for Proprietary Treatment of Documents Used in Support of Petition to retain Regulatory Authority Over Intrastate Cellular Service Rates), **PR File No. 94-SP3**.

If any questions should arise related to these Comments, please contact the undersigned counsel.

Sincerely,

Russell H. Fox /SHR

Russell H. Fox

RHF/df  
Enclosure

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Petitions to Extend State Authority )  
Over Rate and Entry Regulation )  
of All Commercial Mobile Radio )  
Services )

PR File Nos. 94-SP1, 94-SP2, ~~94-SP3~~ ,  
94-SP4, 94-SP5, 94-SP6, 94-SP7,  
and 94-SP8

In the Matter of )  
 )  
Implementation of Sections 3(n) )  
and 332 of the Communications Act )  
 )  
Regulatory Treatment of Mobile )  
Services )  
 )  
TO: The Commission )

GN Docket No. 93-252

**COMMENTS OF E.F. JOHNSON COMPANY**

E.F. Johnson Company ("E.F. Johnson") or ("The Company"), by its attorneys, pursuant to the Public Notice issued by the Federal Communications Commission ("FCC") or ("Commission") hereby submits its Comments in response to the eight (8) petitions requesting continued authority to regulate intra-state mobile service rates.<sup>1/</sup>

<sup>1/</sup> Public Notice, DA 94-876 (released August 12, 1994). The Public Notice specified that Comments responsive to the state petitions must be submitted 30 days from the date the Public Notice was published in the *Federal Register*. Publication of the Public Notice occurred on August 18, 1994. Thirty days from that date is Saturday, September 17. The Commission's Rules state that when a filing date falls on a weekend, submission of the required document is appropriate on the next business day. 47 C.F.R. 1.4(j).

## I. INTRODUCTION

E.F. Johnson is a leading designer and manufacturer of radio communications and specialty communications products for commercial and public safety use. Founded over 70 years ago as an electronics components manufacturer, E.F. Johnson entered the radio communications equipment market in the late 1940's and is one of the three largest providers of land mobile radio systems in the United States. It produces base stations, vehicular mounted and portable transceivers that operate in various portions of the radio spectrum that are used by a variety of entities requiring communications capabilities. The Company manufactures products for the 800 MHz, 900 MHz, and 220 MHz frequency bands, among others. CMRS licensees will operate in these bands and in spectrum now used by licensees in the Business Radio Service, for which the Company also manufactures and distributes products.

The Public Notice was issued pursuant to Congressional directive to implement Section 3(n) and 332 of the Communications Act of 1934 (the "Act"), as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"). In the Docket No. 93-252 proceeding, the Commission has already issued several decisions affecting the regulation of CMRS providers. This phase of the proceeding is designed to determine the extent to which those states which have so requested, may continue to regulate CMRS rates.<sup>2/</sup>

The proposals contained in the state petitions may affect entities in the 800 MHz, 900 MHz, and 220 MHz bands that are currently governed by Part 90 of the

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<sup>2/</sup> The following eight states have requested authority to continue to regulate mobile service providers: Hawaii; Arizona; California; Connecticut; Louisiana; New York; Ohio; and Wyoming.

Commission's Rules. Business Radio Service licensees, now regulated as private carriers, may also be categorized as CMRS providers and potentially subject to rate regulations proposed by the states. The Company is a major manufacturer and distributor of products to these industry segments. Indeed, a significant percentage of 800 MHz licensees use the Company's LTR ® signalling format. Licensees that use the Company's equipment will, therefore, be affected by any state regulations permitted by the Commission which will, in turn, affect the Company's ability to sell its products. Moreover, E.F. Johnson supports a network of over 600 dealers nationwide, most of whom hold licenses for 220 MHz, 800 MHz, 900 MHz and Business Radio Service systems. The Company's dealers will, therefore, also be affected by the new regulatory structure. Accordingly, E.F. Johnson is pleased to have this opportunity to submit the following comments in response to the Public Notice.

## **II. COMMENTS**

Many 800 MHz, 900 MHz, 220 MHz and Business Radio Service licensees were previously regulated as private carriers, and not subject to any state regulatory authority. However, the Budget Act imposes regulatory parity on all mobile communications service providers. Based upon the Budget Act, the FCC categorized these former private carriers as CMRS licensees. Accordingly, they may be subject to the same regulatory treatment as, for example, cellular telephone companies. However, different regulatory treatment is appropriate for different categories of

CMRS licensees. Accordingly, the Commission should not permit the same level of state regulatory involvement in all types of CMRS businesses.

As the Company noted in other contexts, certain classes of CMRS providers, currently governed as Part 90 licensees, should be subject to obligations different than those applicable to other CMRS licensees.<sup>3/</sup> E.F. Johnson continues to urge the Commission to exempt "local" specialized mobile radio ("SMR") systems from CMRS obligations, including rate and entry regulations that may be imposed by states.<sup>4/</sup> To the extent that the Commission permits states to impose rate regulation and entry requirements on CMRS providers, those providers should exhibit characteristics similar to those of cellular licensees. Of those licensees currently regulated under Part 90 of the Commission's Rules, only wide-area SMR systems, which through frequency reuse, are designed in a fashion similar to cellular systems, should be subject to the same level of state regulation as are cellular systems.

The Budget Act permits states to exercise authority over CMRS providers to the extent that: 1) market conditions with respect to the services fail to protect subscribers adequately against unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or 2) such market conditions exist and the

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<sup>3/</sup> See, Comments of E.F. Johnson in Docket No. 94-33, submitted June 27, 1994 and Comments of E.F. Johnson in Docket No. 94-54, submitted September 12, 1994.

<sup>4/</sup> As it has in other contexts, the Commission includes in the term "local SMR", any entity that will be subject to similar regulatory treatment. E.F. Johnson has urged the Commission to regulate 220 MHz systems, non-wide area 800 MHz and 900 MHz systems and Business Radio Service CMRS licensees as local SMR providers.

services are a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within the state.

State regulation over any former private carriers is not warranted at this time. In order for there to be market conditions that fail to protect subscribers from unjust and unreasonable rates, those providers must exercise market power. The Commission determined in the CMRS Second Report <sup>5/</sup> that all CMRS providers, other than cellular licensees, currently lack market power. Because local SMR licensees, among others, lack market power, it is inappropriate to permit states to regulate these entities.

Moreover, local SMR licensees do not provide a replacement for land line telephone exchange service. Typical local SMR carriers are licensed for only a few channels, in an area of operation defined by their transmitter sites. Local SMR systems are not designed, nor do they have the capacity, to act as a substitute for land line telephone service. Accordingly, it is also appropriate to exempt, on this basis, state regulatory authority over local SMR providers that are now CMRS licensees.

### III. CONCLUSION

In addressing state petitions requesting regulatory authority over CMRS providers, the Commission should specifically exempt local SMR licensees. These entities lack the market power that would permit them to create market conditions to

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<sup>5/</sup> Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Dkt. No. 93-252, 9 FCC RR 1411(1994)(CMRS Second Report and Order).

charge unjust or unreasonable rates or rates that are unjustly or unreasonably discriminatory. Nor do these providers offer service that is a replacement for land line telephone exchange service.

**WHEREFORE, THE PREMISES CONSIDERED**, the E.F. Johnson Company hereby submits the foregoing Comments and urges the Commission to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

**E.F. JOHNSON COMPANY**

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Dated: September 19, 1994